

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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DARIAN DEROSA,

Plaintiff,

vs.

CAC FINANCIAL CORP,

Defendant.

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Case No.: 2:16-cv-01472-LDW-SIL

**DECLARATION OF DAVID M. BARSHAY**

DAVID M. BARSHAY, pursuant to 28 U.S.C. §1746, hereby declares under penalty of perjury, as follows:

1. I am a member of the law firm of Barshay Sanders, PLLC, attorneys for Plaintiff DARIAN DEROSA (“Plaintiff”), and submit this Declaration in support of Plaintiff’s Cross-Motion for an order pursuant to Federal Rule of Civil Procedure 56 for Summary Judgment as to Plaintiff’s First Amended Complaint and in Opposition to Defendant’s Motion for Summary Judgment; and for such other, further and different relief as the Court deems just and proper.

2. On March 25, 2016, Plaintiff filed her Complaint (*Dkt.* 1) against Defendant CAC Financial Corp. (“Defendant”), alleging violations of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.*

3. On May 2, 2016, Defendant filed its Answer. *Dkt.* 6.

4. On May 12, 2016, Plaintiff filed a letter request for a pre-motion conference for permission to make a motion to strike Defendant’s Second Affirmative Defense, sounding in bona fide error under 15 U.S.C. § 1692k(c). *Dkt.* 8.

5. On May 16, 2016, Defendant filed an Amended Answer, withdrawing its bona fide error affirmative defense (*Dkt.* 9), and on May 18, 2016, Plaintiff withdrew, as moot, her request for a pre-motion conference. *Dkt.* 10.

6. On June 22, 2016, Plaintiff filed a letter request for a pre-motion conference for permission to make a motion to file a first amended complaint to assert a claim under 15 U.S.C. § 1692e for Defendant's failure to disclose that Plaintiff's debt balance may increase due to interest and fees. *Dkt.* 17. Defendant opposed the request. *Dkt.* 18.

7. Upon telephone conference with the Court on July 26, 2016, Plaintiff was granted leave to file her amended complaint, which she did on July 28, 2016. *Dkt.* 19. Defendant filed its Answer on August 2, 2016. *Dkt.* 20.

8. On November 2, 2016, Defendant submitted a letter requesting a pre-motion conference to seek leave to file a motion for summary judgment. *Dkt.* 24. On November 5, 2016 Plaintiff submitted a letter in response seeking a pre-motion conference for permission to file a cross-motion for summary judgment. *Dkt.* 25.

9. On November 7, 2016, the Court waived the requirement for a pre-motion conference, and on November 21, 2016, issued a briefing schedule, whereby the Defendant's initial Motion for Summary Judgment shall be served by November 29, 2016; Plaintiff's Cross-Motion and Opposition shall be served by December 30, 2016; Defendant's Reply and Opposition shall be served on January 20, 2017; and Plaintiff shall serve her Reply and both parties shall file their fully briefed motion papers by February 3, 2017.

10. Served herewith is Plaintiff's combined Cross-Motion for Summary Judgment as to all Claims of the Amended Complaint and Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

11. On December 9, 2016, I accessed the website of the Consumer Financial Protection Bureau (the “CFPB”) at <http://www.consumerfinance.gov>. Under the “Data & Research” tab, I selected “Credit Card Surveys & Agreements,” which directed me to the URL address <http://www.consumerfinance.gov/data-research/credit-card-data>, and on this page under the heading “Credit card agreements” I selected a link “Access credit card agreements,” which directed me to a page at URL address <http://www.consumerfinance.gov/credit-cards/agreements/>. On this latter webpage, the CFPB maintains a database of credit card agreements from 2011 through the present, searchable by issuer and date.

12. A copy of the “R”Us Credit Card Account Agreement applicable to the time period of Plaintiff’s credit card account with Synchrony Bank, as accessed by me from the CFPB website, is annexed hereto as “Exhibit 1,” and also as “Exhibit 2” to the *Declaration of Darian Derosa* filed simultaneously herewith.

Dated December 30, 2016

**BARSHAY SANDERS, PLLC**

s/ *David M. Barshay*

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